

# HOW AN ISSUE BECOMES A BALLOT PROPOSAL

## ***Background***

Historically, the phenomenon of “direct democracy” — voters casting ballots to amend statutes or the state constitution — has its roots in the populist movement of the turn of the twentieth century. Since 1898, when South Dakota adopted a statewide initiative and referendum capability, many states have incorporated mechanisms for direct citizen participation in lawmaking. Michigan provides more access to the ballot for its citizens than most states. Only 15 states, including Michigan, provide for all three of the tools for citizens to place proposals on the ballot: the initiative to propose changes to the state constitution, the initiative to propose legislation, and the power of citizens to invoke the referendum.

The mechanisms of the referendum and initiative, through which many proposals reach the ballot, have been part of Michigan law for many years. The Michigan Constitution of 1908 contained the right of initiative and the right of referendum (as a result of a 1913 amendment). The referendum used by the Legislature to submit any bill to a vote of the people and the right of the people to propose amendments to the constitution are also found in the 1908 constitution. The right of initiative is defined in the Constitution of the State of Michigan of 1963, as amended, as “. . . the power to propose laws and to enact and reject laws . . .”, and the people’s right of referendum is defined as “. . . the power to approve or reject laws enacted by the legislature . . .”.

An issue can become a statewide ballot proposal as a result of any of the following actions:

- A citizen petition invoking the **initiative** relative to Michigan’s statutes.
- A citizen petition invoking the **referendum** relative to Michigan’s statutes.
- A citizen petition seeking to **amend Michigan’s constitution**.
- Legislation enacted by the legislature which includes a provision that says the legislation cannot become law unless approved by a majority of voters.
- A measure adopted by the legislature seeking to amend the constitution.
- A constitutionally mandated provision which automatically places on the ballot each sixteenth year the question of a general revision of the constitution. This question appeared on the ballot in 1978, 1994, and 2010.

With the exception of the constitutionally mandated provision that automatically places the question of a general revision of the constitution before the electorate every 16 years, every ballot proposal is the result of either citizen or legislative action.

## ***Initiative***

In order to exercise the right to initiate legislation, a citizen or group must secure, on petitions, the signatures of registered electors in an amount not less than eight percent of the total vote cast for all candidates for governor at the last gubernatorial election.

The Michigan Election Law, 1954 PA 116, as amended, establishes requirements and provisions that must be followed in order for a proposed piece of legislation to reach the ballot. These requirements include page and print size specifications, the full text of the proposed law to be printed on the petitions, and the manner in which they are to be circulated. Before they are circulated for signatures, all petitions to initiate legislation or amend the constitution must be filed with the Secretary of State to be made available to the public. Not less than ten days before the beginning of a session of the legislature, completed **petitions to initiate legislation** are filed with the Secretary of State and the Board of State Canvassers, which then must check validity and sufficiency of the signatures and make an official declaration of approval or disapproval at least two months before the election. The Elections Division of the Secretary of State recommends that petitions be filed at least 160 days prior to the general election to assure placement on the ballot, if required. The legislature has 40 days from the time it receives the petition to enact or reject the proposed law or to propose a different measure on the same question. If not enacted, the original initiative proposal and any different measure passed by the legislature must go before the voters as ballot proposals. A substitute passed by the legislature would be a separate proposal. Regarding situations where legislative and citizen-originated measures, or any proposals, are approved and conflict, the constitution provides:

If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

If an initiated proposal is passed by a majority of those voting, the new law takes effect ten days after the date of the official declaration of the vote. A new initiated law thus passed cannot be vetoed by the governor. It can only be amended or repealed by a subsequent vote of the electors or by a three-fourths vote of the members in each chamber of the legislature. (Article 2, Section 9, Constitution of the State of Michigan of 1963, as amended.)

The method of initiative used in Michigan is sometimes called the indirect initiative because the measure is first submitted to the legislature rather than directly to the voters.

## ***Referendum***

A referendum is also exercised through the gathering of signatures. The number of registered voters needed to invoke the referendum is five percent of the total vote cast for all candidates for governor at the last gubernatorial election. A referendum cannot be proposed to approve or reject a law that appropriates money for state institutions or to meet deficiencies in state funds. A referendum petition must be filed with the Secretary of State within 90 days of the final adjournment of the legislative session during which the law in question was enacted. As with the initiative, these petitions are filed with the Secretary of State and the Board of State Canvassers is responsible for ascertaining the validity and sufficiency of the signatures.

After the referendum is properly invoked, the law in question must be suspended until the next general election, at which time the law will appear before voters as a ballot proposal. A law approved through the referendum by a majority of the voters takes effect ten days after the date of the official declaration of the vote. Unlike laws approved as a result of the initiative, which require a three-fourths majority of each legislative chamber to be amended, a law approved under referendum may be amended using the normal legislative process. If the law is rejected, of course, it does not go into effect. (Article 2, Section 9, Constitution of the State of Michigan of 1963, as amended.)

## ***Constitutional Amendments***

Citizen action, through the petition, can also be used to amend the constitution. In the case of proposed constitutional amendments, signatures of registered voters must equal at least 10 percent of the number of votes cast for all candidates in the last gubernatorial election in order for the matter to go before the electorate. As in the case of initiative and referendum, petitions seeking amendments to the state's constitution are filed with the Secretary of State, and the Board of State Canvassers is responsible for ascertaining the validity and sufficiency of the signatures. Petitions must be filed at least 120 days prior to the election. After the correct number of valid signatures are ascertained, the proposed amendment to the constitution is placed on the ballot at least 60 days prior to the election. Any proposal that is approved by a majority of those voting becomes part of the constitution and takes effect 45 days after the date of the election at which it was approved. (Article 12, Section 2, Constitution of the State of Michigan of 1963, as amended.)

## ***Legislative Action***

Ballot proposals placed before the electorate as the result of legislative action are of three types: proposed amendments to the constitution (traditionally proposed as joint resolutions of the two legislative chambers), bills passed by the legislature and approved by the governor that stipulate that voter approval is necessary for the bill to become law, and questions pertaining to the state borrowing money for specific purposes.

Nothing in the constitution may be altered without the approval of the voters. Thus, any measure by the legislature to amend the constitution must be placed on the ballot. An amendment proposed by the legislature in the form of a joint resolution can be introduced into either the Senate or the House of Representatives. In order to become a ballot proposal, such a measure must be agreed to by a two-thirds majority of the members in each chamber. If passed by the legislature at least 60 days before the election, the measure is placed on the ballot at the next general or special election. If approved by a majority of those voting on the ballot proposal, the measure becomes part of the constitution 45 days after the date of the election at which it was approved. (Article 12, Section 1, Constitution of the State of Michigan of 1963, as amended.)

The legislature may, in effect, ask for voter approval of a bill. This may be done for any bill that has passed the legislature and has been approved by the governor, except one appropriating money. In order for a ballot proposal to go before the voters in this manner, the bill must contain a provision that the bill cannot become law unless it receives approval from a majority of those voting. (Article 4, Section 34, Constitution of the State of Michigan of 1963, as amended.)

Another manner in which a proposal goes before the people involves the state borrowing money for specific purposes. Through an act (or acts) by the legislature which is adopted by a two-thirds majority of the members in each chamber, the **question of borrowing money** may go before the electorate. The proposal must state the amount to be borrowed, the specific purpose to which the funds are to be devoted, and the method of repayment. (Article 9, Section 15, Constitution of the State of Michigan of 1963, as amended.)

### ***Ballot Proposal Language***

A great deal of attention, and occasional controversy, is often focused on the actual ballot language of the proposals. The language that is printed on the ballots as “Proposal 14-1,” “Proposal 14-2,” etc. is often different than the wording of the actual amendment or law that is being considered. Obviously, the length of some measures and the technical language used to gain legal clarity prevent an entire measure from being reproduced on the ballot. The important task of summarizing each proposal into a yes or no question in less than 100 words (excluding the title) is the responsibility of the Board of State Canvassers. The wording that is finalized as the ballot proposal is often the result of many hours of discussion.

### ***Recent Ballot Proposals***

Since the ratification by Michigan voters of the current constitution, the Constitution of 1963, there have been many significant changes in our state that have come about because of ballot proposals. Many elements of our everyday lives have resulted from this method of direct citizen impact. Things such as daylight savings time, the legal drinking age, the removal of sales tax on food and prescription drugs, the prohibition of nonreturnable beverage containers, the Vietnam era veterans bonus, tax limitations, school financing, and setting term limits for state elected officials. In all, there have been **78 proposed amendments to the Constitution of 1963**. Thirty-one of these have resulted from initiatory petitions, while 44 have been placed on the ballot by the legislature. Also included are three questions of calling a constitutional convention: in 1978, 1994, and 2010, which were all defeated. Of the 78 total proposed amendments to the constitution (including the question of a constitutional convention), 32 have been approved by the voters of Michigan.

There have been 13 occasions in which **the initiative** has brought a proposed law before the people for a vote under our present constitution. Seven of these proposals have been passed by the voters. Successful initiatives that have passed and become law have included daylight savings time in 1972, the prohibition of nonreturnable beverage containers in 1976, casino provisions in 1996, and the legalization of medical marihuana in 2010.

Twenty-four instances of **the referendum** bringing legislation to the electorate for approval or rejection have occurred since the Constitution of 1963 became effective on January 1, 1964. Eleven of these referenda were approved by the voters.

There have been seven instances of the **legislature approving initiatives proposed by the citizens**, which eliminated the need for the measures to go before voters. These citizen-initiated and legislature-approved acts were 1964 PA 2, 1987 PA 59, 1990 PA 211, 2004 PA 135, 2006 PA 325, 2013 PA 182, and 2014 PA 281.